

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT SMITH, Jr.,

Petitioner,

v.

BELINDA STEWART, *et al.*,

Respondents.

No. C07-166RSL

ORDER DENYING CERTIFICATE
OF APPEALABILITY

This matter comes before the Court on petitioner's "Notice of Appeal" which the Court considers as a request for a certificate of appealability under 28 U.S.C. § 2253. See Dkt. #7. Under the amended version of 28 U.S.C. § 2253(c), a petitioner may not appeal the denial of a habeas corpus petition unless the district court or the Ninth Circuit issues a certificate of appealability identifying the particular issues that may be pursued on appeal. United States v. Asrar, 116 F.3d 1268, 1269-70 (9th Cir. 1997). To obtain a certificate of appealability, the petitioner must make a substantial showing of the denial of a constitutional right, meaning that the petitioner must show that the resolution of the habeas petition is debatable among reasonable jurists or that the issues presented were "adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (citing Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)).

The Court's finding that it lacks jurisdiction to consider the petition until the Ninth Circuit has authorized the application for writ of habeas corpus under 28 U.S.C. § 2244(b)(3)(A) is not debatable among reasonable jurists. See Dkt. #3 (Report & Recommendation) at 2; Dkt.

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1 #5 (Order Dismissing § 2254 Petition); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (“Where a
2 plain procedural bar is present and the district court is correct to invoke it to dispose of the case,
3 a reasonable jurist could not conclude either that the district court erred in dismissing the
4 petition or that the petitioner should be allowed to proceed further. In such a circumstance, no
5 appeal would be warranted.”).

6 Petitioner has, therefore, failed to make a substantial showing of the denial of a
7 constitutional right and is not entitled to a certificate of appealability under 28 U.S.C. § 2253.

8 For all of the foregoing reasons, petitioner’s request for a certificate of appealability (Dkt.
9 #7) is DENIED.

10 DATED this 30th day of April, 2007.

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14 Robert S. Lasnik
15 United States District Judge
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